restitution of conjugal rights but not one of nullity *ab initio* in respect of marriage celebrated outside Sarawak unless the husband is domiciled in Sarawak or both husband and wife are resident in Sarawak at the time of presentation of a petition.

With respect, I think the learned judge was wrong to give a restricted interpretation to section 7 of Cap. 94. In construing a statute the court should not try to insert words into it thus restricting its meaning. The duty of the court is limited to interpreting the words used by the legislature. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. Craies on Statute Law, 6th Edition, page 7 states: —

"In other words, the language of Acts of Parliament, and more especially of modern Acts must neither be extended beyond its natural and proper limit, in order to supply omissions or defects, nor strained to meet the justice of an individual case."

In this context I would like to refer to the *Magor and St. Mellons Rural District Council* v. *Newport Corporation*[15] where Lord Simonds made these observations: —

"The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited."

Furthermore, as I have said earlier the Ordinance shows that intention of the legislature is to be liberal rather than restrictive and to facilitate easy means of obtaining divorce. In *Nokes* v. *Doncaster Amalgamated Collieries Ltd.*[16] Viscount Simon L.C. offered this piece of advice in construing a statute which may give rise to two interpretations: —

"At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

In the light of the wide discretion given to the High Court to grant divorce on grounds not found in other jurisdiction it does not seem to be the intention of the legislature to restrict section 7 to a civil marriage celebrated in Sarawak. The legislature could have made it as clear by adding the words "in Sarawak" as it had done to section 4 in respect of nullity *ab initio*. There is nothing to prevent the court after hearing evidence from granting a divorce of a marriage celebrated outside Sarawak on the ground that circumstances have arisen which make it reasonable and just to dissolve the marriage in the exercise of its power under section 6(3)(b) as was done by Briggs J. in *Ong Kim Yam* v. *Teo Guan Hia*[14] so long as the wife and children are properly provided for. The court can exercise that discretion by granting divorce on that ground even if the court considers it ought not to dissolve a marriage by mutual consent.

For reasons given, I would allow the appeal with the direction that the joint petition be referred back to the High Court for hearing. There will be no order as to costs. Deposit to be refunded to appellant.

Suffian L.P. and **Wan Suleiman F.J.** concurred.

Appeal allowed.

Solicitors: *Ee Lim & Leong.*

S. SINGARAM v. FONG PECK MOI & ANOR.

[A.C.J. (Ibrahim J.) April 22, 1975]

[Muar — Civil Appeal No. 1 of 1974]

Practice and Procedure — Memorandum of Appeal filed and served out of time — Appeal dismissed with costs — Appellant by Notice of Motion applying for decision to be set aside — Whether court has power to set aside decision — Subordinate Courts Rules, 1950, O.39 r.3(2) — R.S.C. 1957, O.13 r.10, O.28 r.11, & O.59 r.2(1).

On August 27, 1973 the defendant in Segamat Magistrate's Court Civil Action No. 7 of 1972 filed a Notice of Appeal against the decision of the learned Magistrate. The notice that the appeal record was ready was served on the defendant on January 11, 1974, but the Memorandum of Appeal was filed and served only on January 29, 1974, after the expiry of the 14 days stipulated under O. 59 r. 2(1) of the Rules of the Supreme Court, 1957. The plaintiffs filed and served a Notice of Preliminary Objections on March 2, 1974 and a reply to that notice was filed and served by the defendant on March 7, 1974. On February 23, 1975, the court dismissed the appeal with costs on the ground that the Memorandum of Appeal was filed and served out of time. By Notice of Motion dated March 2, 1975, the defendant sought to set aside the said decision. Notice of Preliminary Objections in respect of the application was filed and served on March 20, 1975.

Held: (1) the decision made by the court was final and the court had no power to set it aside;

(2) Order 13 r.10 of the Rules of the Supreme Court, 1957 deals specifically with setting aside judgments entered pursuant to any of the preceding rules of O. 13 and could not be extended to this case, particularly when the issue had been vigorously argued before the decision was made;

(3) under Order 28 r. 11 only clerical mistakes or accidental omissions in judgments or orders may be corrected on motions or summons without an appeal.

[**Editorial Note:** This decision was affirmed on appeal to the Federal Court in Federal Court Civil Appeal No. 45 of 1975 on October 20, 1975.]

Cases referred to:-

(1) *Lim Chiam Neo* v. *Tan See Tiam* (1963) M.L.J. 145.

(2) *Natesan* v. *Goh Gok Hoon* [1968] 2 M.L.J. 3.

CIVIL SUIT.

D. A. Devadason for the appellant.

H. N. McLeod for the respondents.

Ibrahim J.: On August 27, 1973 the defendant in Segamat Magistrate's Court Civil Action No. 7 of 1972 filed a Notice of Appeal against the whole of the decision of the learned magistrate made on August 26, 1973 pursuant to the order dated June 26, 1973 made by Pawan Ahmad J. The notice that the appeal record was ready in Form 40 under O.39 r. 3(2) of the Subordinate Courts Rules, 1950 was served on defendant on January 11, 1974 but the Memorandum of Appeal was filed and served only on January 29, 1974 apparently after expiry of the 14 days stipulated under O.59 r. 2(1) of the Supreme Court Rules, 1957. Notice of Preliminary Objections was filed and served by plaintiffs on March 2, 1974 and one of the grounds of objection was that the Memorandum of Appeal was filed and served out of time. A reply to that notice was filed and served by defendant on March 7, 1974. On February 23, 1975 I dismissed the appeal with costs on the ground that the Memorandum of Appeal was filed and served out of time (see order at enclosure 18). Defendant had not appealed against that decision but by Notice of Motion (enclosure 15) dated March 2, 1975 had applied for it to be set aside "and that the

Memorandum of Appeal filed and served on the 29th day of January, 1974 be treated as having been duly filed and served and that the necessary extension of time for filing and service of same be granted, notwithstanding this late application for extension of time, and further in the meanwhile execution be stayed on the aforesaid judgment and for such further and other relief as this Honourable Court may deem just." Notice of Preliminary Objections in respect of the application was filed and served on March 20, 1975 (enclosure 16) and on March 22, 1975 I dismissed the application with costs.

I had come to that decision because I considered that the decision I made on February 23, 1975 insofar as this court was concerned was final and that I had no power to set it aside. In *Lim Chiam Neo* v. *Tan See Tiam*[1] it was held that it was for the Court of Appeal to correct any errors or irregularities in the order of the trial judge as the trial judge had no jurisdiction to do so after judgment had been pronounced. Ismail Khan J. (as he then was) at page 146 said:

"As to the other grounds on which it is submitted in the alternative that I should discharge or vary the order of June 18, 1962, I now only say briefly that it is the Court of Appeal that should correct any of the errors or irregularities complained of. I have no jurisdiction to discharge or vary the order for the simple reason that after judgment pronounced I am *functus officio*."

It was contended by defendant that O.13 r. 10 of the Supreme Court Rules, 1957 could by analogy apply in this case. I did not agree with him. The said r. 10 deals specifically with setting aside judgment entered pursuant to any of the preceding rules of O.13 and I could not therefore see how it could be extended to this case, particularly when the issue had been vigorously argued before the decision was made. Under O.28 r. 11 only clerical mistakes or accidental omissions in judgments or orders may be corrected on motions or summons without an appeal.

Furthermore I was of the view that defendant should not be permitted to blow hot and cold and have a second bite at the cake. In *Broom's Legal Maxims*, 10th Edition, at page 103 it is stated that "He is not to be heard who alleges things contrary to each other." As defendant had previously maintained that he was not out of time he could not now be heard to the contrary and ask for some other remedy. The following passage from the judgment of Ong Hock Thye F.J. (as he then was) in *Natesan* v. *Goh Gok Hoon*[2] at page 8 is illustrative of the above-stated maxim: —

"Above everything else is the fact that the learned counsel for the appellant now sets up a case which not only is not founded upon, but contrary to, this appellant's own pleadings. We should be creating an absurd precedent to consider allowing this appeal, on any ground, without even any application for consequential amendment of the defence pleaded. Any amendment, at this stage, setting up a case which amounts to a *volte-face*, is naturally out of the question."

Order accordingly.

Solicitors: *D.A. Devadason; H.N. McLeod.*

PUBLIC PROSECUTOR v. YEOH ENG KHUAN

[A.Cr.J. (Abdoolcader J.) April 29, 1975]
[Ipoh — Criminal Appeal No. 76 of 1974]

Criminal Law and Procedure — Respondent convicted of offence under s. 39A, Dangerous Drugs Ordinance, 1952 — Binding over — Whether sentence adequate — Principles of sentencing — Criminal Procedure Code (F.M.S. Cap. 6), s. 294 — Dangerous Drugs Ordinance, 1952, s. 39A.

Dangerous Drugs — Possession — Dangerous Drugs Ordinance, 1952, s. 39A.

The respondent, a 20 year old youth, was convicted of an offence under section 39A of the Dangerous Drugs Ordinance, 1952. The learned President ordered that he be bound over for 2 years. The Public Prosecutor appealed against the inadequacy of the sentence.

Held, allowing the appeal: (1) unless the courts take a firm stand in the matter, the whole purpose of the legislature in enacting section 39A of the Ordinance which imposes a minimum mandatory term of imprisonment of 3 years and a maximum of 14 years would be lost;

(2) considering the amount and quantity of the drugs found in his possession, the respondent was not merely an addict but an operator of somewhat greater significance;

(3) the order of the learned President should be set aside and the respondent sentenced to imprisonment for 3 years.

CRIMINAL APPEAL.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the appellant.

S. Thevinthiran for the respondent.

Abdoolcader J. (delivering oral judgment): This is an appeal by the Public Prosecutor against an order made by the learned President of the Sessions Court, Ipoh, binding over the respondent in the sum of $2,000 in one surety for a period of 2 years on conviction for an offence under section 39A of the Dangerous Drugs Ordinance, 1952, to which he pleaded guilty. The Public Prosecutor now appeals against the inadequacy of the sentence.

I have considered carefully the submissions made by the learned Deputy Public Prosecutor and learned counsel for the respondent, and it would appear to me that unfortunately for the respondent this case does not strictly come within the purview of section 294 of the Criminal Procedure Code. The only point raised which is material for the purposes of that section is that he was some 20 years and 7 months at the time of the offence. Mr. Thevinthiran for the respondent also seeks to bring to my attention for consideration the extenuating circumstances under which the offence was committed. These I take it refer only to the statement made by the respondent that the drugs were the property of some other person who had run away. There was no evidence whatsoever to this effect and, in any event, the charge against the respondent is one of possession and not ownership.

Assuming for a moment I take into consideration the plea put forward by counsel for the respondent that the respondent had in his immediate possession when he was apprehended only 44 tubes of a substance which on analysis proved to contain 4.86 grammes of heroin and this would take the case outside the ambit of section 39A of the ordinance which prescribes a minimum of 5 grammes before it can apply, it must be borne in mind that he was then immediately taken back to the room from which he jumped out and there another 8 tubes of the substance were found which on analysis were found to contain 0.93 grammes